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APPLICATION NO. -	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/000,320	12/04/2001	Tracy J. Kimbrel	00280686AA	9757
30743	7590	10/20/2005		
WHITHAM, CURTIS & CHRISTOFFERSON, P.C. 11491 SUNSET HILLS ROAD SUITE 340 RESTON, VA 20190			EXAMINER BOUTAH, ALINA A	
			ART UNIT 2143	PAPER NUMBER

DATE MAILED: 10/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/000,320

Applicant(s)

KIMBREL ET AL.

Examiner

Alina N Boutah

Art Unit

2143

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8-11 is/are allowed.
- 6) ☒ Claim(s) 1-7 and 12-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 July 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 7/25/05
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Response to Amendment

This action is in response to Applicant's amendment filed July 25, 2005. Claims 1-15 are pending in the present application.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on July 25, 2005 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Drawings

Applicant has amended the specification to correct the Examiner's objection to the drawings. The objection is now withdrawn.

Claim Rejections - 35 USC § 112

Applicant has amended claims 1, 8 and 15 to overcome the first and second paragraph of 35 U.S.C. 112 rejections. These rejections are now withdrawn. However, upon further consideration, the following rejection applies:

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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Claim 15 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. It is unclear as to whom or what is performing the steps of modeling, maintaining the server allocations, associating each customer's demand and reducing a minimum-cost as claimed.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5-7 and 12-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are directed to intangible benefit as well as a resource allocation to more efficiently solve computationally intensive problems. It is unclear as to what Applicant is regarded as his invention.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 5, 6, 12 and 13 rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims are directed to "intangible benefits," which are neither a process nor machine, thus making them non-statutory.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,216,593 issued to Dietrich et al. (hereinafter referred to as Dietrich) in view of US 2003/0037146 to O'Neill.

(Amended) Regarding claim 1, Dietrich teaches a method of resource allocation to yield a benefit comprising the steps of:

generating an input matrix of demands of customer demands for resources of resources indexed by customers and time periods where a benefit function is known in advance (figure 2 steps 30-34; col. 2, lines 17-34); and

producing from the input matrix an output matrix of allocations of resources to customers to realize a benefit (figure 4; col. 2, lines 17-34).

However, Dietrich fails to explicitly teach reallocating a resource from a first customer to a second customer makes that resource unavailable to the first customer during a time interval that the resource is allocated to the second customer. O'Neill teaches reallocating a resource from a first customer to a second customer makes that resource unavailable to the first customer during a time interval that the resource is allocated to the second customer (figures 6 and 7; 0074, 0078-0079). At the time the invention was made, one of ordinary skill in the art would

have been motivated to reallocate a resource from a first customer to a second customer and making the resource unavailable in order to prevent the first customer from accessing the resource, thus decreasing the resource sharing conflicts.

Regarding claim 2, Dietrich teaches the method of resource allocation as recited in claim 1, wherein resource allocation is done to maximize a benefit (abstract; col. 2, lines 17-34).

Regarding claim 3, Dietrich teaches the method of resource allocation as recited in claim 1, wherein the benefit is a tangible benefit (col. 2, lines 38-58).

Regarding claim 4, Dietrich teaches the method of resource allocation as recited in claim 3, wherein the tangible benefit is a profit and resource allocation is done to maximize the profit (col. 2, lines 38-58).

Regarding claim 5, Dietrich teaches the method of resource allocation as recited in claim 1, wherein the benefit is an intangible benefit (col. 2, lines 38-58).

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Regarding claim 6, Dietrich teaches the method of resource allocation as recited in claim 5, wherein the intangible benefit is customer satisfaction and resource allocation is done to maximize customer satisfaction (col. 2, lines 38-58).

Regarding claim 7, Dietrich teaches the method of resource allocation as recited in claim 1, wherein the resource is computer cycles and resource allocation is done to more efficiently solve computationally intensive problems (col. 4, lines 56-69).

Allowable Subject Matter

Claim 8 has been amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in the previous Office action. Therefore it is allowed over prior art of record.

Dependent claims 9-11 are allowed because they depend on allowed claim 8.

Dependent claims 12-14 would be allowed if the 101 as well as the 112 rejections were overcome.

Response to Arguments

Applicant's arguments with respect to claims 1-7 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment of claim 1 necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alina N. Boutah whose telephone number is 571-272-3908. The examiner can normally be reached on Monday-Friday (9:00 am - 5:00 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on 571-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Wm. C. Vaughn, Jr.
WILLIAM C. VAUGHN, JR.
PRIMARY EXAMINER